

DOCKET FILE COPY ORIGINAL
Before the
FEDERAL COMMUNICATIONS COMMISSION
Washington, D.C. 20554

RECEIVED
MAR 22 2000
FEDERAL COMMUNICATIONS COMMISSION
OFFICE OF THE SECRETARY

In the Matter of)	
)	
Revision of the Commission's)	CC Docket No. 94-102
Rules to Ensure Compatibility)	RM-8143
with Enhanced 911 Emergency)	
Calling Systems)	

COMMENTS OF THE
CELLULAR TELECOMMUNICATIONS INDUSTRY ASSOCIATION

The Cellular Telecommunications Industry Association ("CTIA")^{1/} hereby submits its comments in support of the petitions for reconsideration filed by the Rural Cellular Association ("RCA") and CorrComm, L.L.C. ("CorrComm")^{2/} (collectively, "Petitioners") in the above-captioned proceeding.^{3/} The Commission's decision to eliminate the requirement that a mechanism must be in place for recovering a carrier's cost of implementing E-911 Phase II location service will unfairly burden all CMRS providers and unnecessarily places at risk the successful implementation of the Commission's E-911 rules. Moreover, the Commission's

^{1/} CTIA is the international organization of the wireless communications industry for both wireless carriers and manufacturers. Membership in the association covers all Commercial Mobile Radio Service ("CMRS") providers and manufacturers, and includes the 50 largest cellular and broadband PCS providers. CTIA represents more broadband PCS carriers and more cellular carriers than any other trade association.

^{2/} Petition for Reconsideration of The Rural Cellular Association, filed January 28, 2000 ("RCA Petition"); Petition for Reconsideration of CorrComm, L.L.C., filed January 28, 2000 ("CorrComm Petition").

^{3/} Revision of the Commission's Rules to Ensure Compatibility with Enhanced 911 Emergency Calling Systems, CC Docket No. 94-102, RM-8143, Second Memorandum Opinion and Order, FCC 99-352 (rel. Dec. 8, 1999) ("Cost Recovery Order").

No. of Copies rec'd 015
List ARCADE

decision to repeal this requirement impermissibly places wireless carriers at a competitive disadvantage to wireline carriers, because wireline carriers will continue to recover from PSAPs all of their 911 costs, plus a fair rate of return. CTIA agrees with RCA and CorrComm that small, rural carriers will be particularly disadvantaged. CTIA also agrees with the Petitioners that the Commission's failure to provide adequate notice that it was considering changing its rules in such a significant manner violated the Administrative Procedure Act ("APA"). Finally, CTIA agrees with CorrComm that the Commission's Regulatory Flexibility Act analysis was woefully inadequate and factually incorrect. To address these deficiencies, the Commission should reconsider the Cost Recovery Order and reinstate the requirement that a mechanism for recovering carrier costs must be in place before a PSAP may request Phase I or Phase II E-911 service.

DISCUSSION

CorrComm and RCA have sought reconsideration of the Commission's decision to eliminate the cost recovery mechanism as a precondition for implementation of E-911 service. The Commission's decision to remove this requirement eliminates a state's incentives to adopt cost recovery mechanisms, leaving wireless carriers to recover their implementation costs however they can, and potentially forcing PSAPs to rely on existing funding mechanisms to fund their implementation of wireless E-911 service.

While the Commission argues that it has not mandated that carriers utilize any particular cost recovery mechanism,^{4/} in a competitive market, where prices are driven towards a carrier's

^{4/} Cost Recovery Order at ¶ 58.

costs, carriers will be forced to recover their costs of implementing E-911 directly from their subscribers or absorb the costs of providing E-911 services themselves. CTIA agrees with Petitioners that the Commission failed to adequately address the disproportional burden its action has placed on small and rural carriers, who typically have to recover their costs from across a smaller customer base. CorrComm estimates that the repeal of the cost recovery mechanism rule would result in subscriber rate increases of five to fifteen percent.^{5/} Increases of this magnitude will cause customers to abandon small carriers,^{6/} contrary to the goal of encouraging rural and small business participation in the CMRS industry.^{7/} To avoid this harmful result, the Commission should reinstate the requirement that a mechanism for recovering carrier costs must be in place before a PSAP may request wireless Phase II E-911 service.

Such a result also is compelled by the APA.^{8/} Contrary to the Commission's claims, it did not provide adequate notice of its intent to repeal the cost recovery mechanism requirement. The Commission argues that CTIA's Petition for Reconsideration raised the issue of eliminating the funding mechanism.^{9/} CTIA did not petition for a change in the Commission's rules; rather, CTIA only sought clarification that a funding mechanism that was limited to carrier self-recovery of E-911 costs solely from their customers would not satisfy the Commission's cost recovery

^{5/} CorrComm Petition at 3.

^{6/} See, e.g., 47 U.S.C. § 309(j)(4)(D).

^{7/} See, e.g., 47 U.S.C. § 309(j)(4)(D).

^{8/} 5 U.S.C. § 553(b).

^{9/} Cost Recovery Order at ¶ 60.

rule.^{10/} Interested parties, including CMRS carriers, could not reasonably have anticipated that the Commission would materially change its rules by eliminating entirely the mechanism for wireless carriers to recover their costs for providing E-911 service.^{11/} In fact, no commenter interpreted CTIA's Petition as a request for the Commission to fundamentally restructure its rules to eliminate the carrier cost recovery mechanism,^{12/} and such an interpretation would have been unreasonable. Repeal of the cost recovery requirement is in no sense a "logical outgrowth" of CTIA's Petition for Reconsideration or any other record evidence in this proceeding.^{13/}

If the Commission intended to eliminate the cost recovery rule, it was required to provide notice and an opportunity for parties to frame their discussions on the revision.^{14/} Small wireless carriers in particular did not have an opportunity to inform the Commission of the consequences that such a decision would have on them. Lacking information on the impact of its decision on small carriers -- not to mention the impact on all other CMRS carriers and even the PSAPs' own

^{10/} Petition for Reconsideration of CTIA at 17-18, filed February 17, 1998. The Commission appears to have agreed with CTIA's analysis, at least implicitly, because it determined that a rule change, and not a mere clarification, was required to shift the cost-recovery burden to CMRS carriers.

^{11/} See CorrComm Petition at 1-2.

^{12/} Parties did not comment on eliminating the carrier cost recovery mechanism because the issue was not addressed in CTIA's Petition for Reconsideration. For example, AT&T Wireless agreed with CTIA that PSAPs may not require carriers to recover the costs of implementing E-911 solely through charges to CMRS customers. AT&T Comments at 4-5, filed March 18, 1998.

^{13/} See, e.g., Stoughton Wis. v. EPA, 858 F.2d 747, 752-53 (D.C. Cir. 1988); Small Refiner Lead Phase-Down Task Force v. EPA, 705 F.2d 506, 547-49 (D.C. Cir. 1983).

^{14/} See, e.g., Stoughton Wis., 858 F.2d at 753; Home Box Office v. FCC, 567 F.2d 9, 36 (D.C. Cir. 1977).

funding mechanisms -- the Commission did not have an adequate record to justify elimination of the wireless E-911 funding mechanism rule.

CTIA also agrees with CorrComm that the Commission's Regulatory Flexibility Act analysis -- which concludes that few, if any, small entities would be negatively affected by the removal of the cost recovery mechanism for carriers, and incredibly, that the Cost Recovery Order actually would reduce the overall cost for carriers -- has no basis in fact or common sense.^{15/} Contrary to the Commission's unsupported analysis, requiring small wireless carriers to self-fund E-911 implementation or recover the costs of implementation from subscribers will have a devastating effect on small businesses. CTIA urges the Commission to reconsider its decision in the Cost Recovery Order.

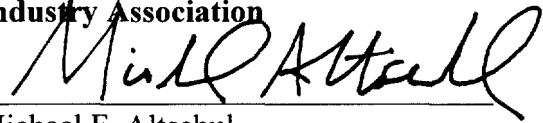
^{15/} CorrComm Petition at 4.

CONCLUSION

For the foregoing reasons, CTIA urges the Commission to grant the petitions for reconsideration and reinstate the requirement that a mechanism for recovering carrier costs be in place before a PSAP may request E-911 service.

Respectfully submitted,

**Cellular Telecommunications
Industry Association**



Michael F. Altschul
Vice President, General Counsel

Randall S. Coleman
Vice President for Regulatory Policy & Law

1250 Connecticut Avenue, N.W.
Suite 800
Washington, D.C. 20036
(202) 785-0081

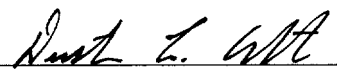
March 22, 2000

Certificate of Service

I, Dustun L. Ashton, hereby certify that on this 22nd day of March, 2000 copies of the foregoing "Comments of Cellular Telecommunications Industry Association" were sent by first class mail to the following:

Sylvia Lesse
Kraskin, Lesse & Cosson, LLP
2120 L Street, N.W., Suite 520
Washington, DC 20037
Attorney for The Rural Cellular
Association

Donald J. Evens
Donelan Cleary Wood & Maser, P.C.
1100 New York Avenue, N.W.
Suite 750
Washington, DC 20005-3934
Attorney for CorrComm, L.L.C.

 /s/
Dustun L. Ashton